IN THE HIGH COURT OF UTTARANCHAL,

AT NAINITAL.

A.O. No. 225/2001

(649 of 1985)

Sangram Singh S/o Dharm Sigh
R/o Village Ratgaon, P.S. Garur,
District Chamoli, owner of Bus No. USY 3180 ..Appellant.

Vs.

1- Smt. Abha Kukreti W/o Pyare Lal
2- Prashant
3- Mohan alias Minu, sons of Pyare Lal Kukreti
All R/o Parel Marg, Kotdwara, District
Pauri Garhwal.
4- Oriental General and Fire Insurance Co.
Ltd. Divisional Office, Jwalapur,
District Saharanpur and head office Oriental Fire
Building Asaf Ali Road, New Delhi .. Respondent.

Sri S.N. Babulkar, Senior Advocate, assisted by Sri Yogesh Pacholia, learned counsel for the appellant.
Sri R. Dobhal, learned counsel for respondents 1 to 3.
Sri Deepak Rawat, learned counsel for respondent No.4.

AND
A.O. No.580/2001

Oriental Insurance Co. Ltd. through its
Senior Divisional Manager ..Appellant.

Vs.

1- Smt. Abha Kukreti W/o Pyare Lal
2- Prashant S/o Pyare Lal Kukreti,
3- Mohan son of Pyare Lal Kukreti
Under guardianship of their mother Smt. Abha
Kukreti all R/o Patel Marg, Kotdwar
Garhwal.
4- Sangram Singh S/o Dharam Singh
R/o Village Ratgaon P.O. Garur District Chamoli.
5- Garhwal Motor Owners Union Limited Kotdwara
through its General Manager .. Respondents.

Sri Deepak Rawat, learned counsel for the appellant.
Sri R. Dobhal, learned counsel for respondents 1 to 3.
Sri. S.N. Babulkar, Senior Advocate, assisted by Sri Yogesh Pacholia, learned counsel for the respondent No. 4.

(Hon'ble B.C. Kandpal, J.)

Both these appeals from order, under Section 110-D of the Motor Vehicles Act, have been preferred by the appellants against the judgment and award dated 3-6-1985 passed by the

M.A.C.T./District Judge, Pauri Garhwal in MACT No. 43/1983 Smt. Abha Kukreti Vs. Sangram Singh and others, by which the Tribunal has awarded an amount of Rs.1,25,000/- as compensation along with an interest @ 6% per annum to the claimants.

2. Both these appeals arise out of the same judgment and between the same parties, hence are being disposed of by this common judgment.

3- Heard learned counsel for the parties and perused the record.

4- Learned counsel for the appellant/ Insurance Company has confined his argument only to the point that the liability of the Insurance Company at the time of the accident in view of the provisions of Section 95(1)(b)(ii) read with Section 95(2)(b)(ii) and 95(2) of the M.V. Act, was upto an extent of Rs. 5,000/- each passengers and Rs. 75,000/- in all where the vehicle was registered to carry more than 50 and not more that 60 passengers. The argument of the learned counsel for the appellants is that a passengers bus involved in this case, which was carrying the passengers of hire or reward at the time of accident, therefore, the provisions contained in Section 95(1)(b)(ii) read with Section 95 (2)(b)(ii) of the M.V. Act become applicable in this case.

5- The record reveals that the motor bus No. USY 3180 on 08.07.1983 while on way from Kotdwar to Pauri Garhwal, fell down from the road towards its right side. The bus was full of passengers and out of the total passenger, 7 to 8 passengers died at the spot while the others suffered injuries. The Tribunal, after the assessment of the evidence, awarded an amount of Rs. 1,25,000/- to the claimant in this case as compensation, who is the wife of the deceased Sri Pyare Lal, who died in the accident.

6. The Hon'ble Apex Court in the case of ***Road Transport Company Vs. Bhan Singh and another,*** reported in ***II (1998) ACC***

190 (SC) has held that the liability of the Insurance Company will have to be determined under Section 95(2) (b)(ii) of the M.V. Act.

7. In the instant case, it is not in dispute that at the relevant time Section 95 (2(b)(ii) MV Act limited the liability of the Insurance Company to the extent of Rs. 5,000/- for each passengers and Rs. 75,000/- in all, where the vehicle was registered to carry more than 30 but not more than 60 passengers.

8. The vehicle involved in the accident in the present case was a passenger bus, in which the passengers were being carried for hire or reward. Therefore, in view of the Hon'ble Apex Court's decision (Supra) the liability of the Insurance Company would be only upto an extent of Rs. 5,000/- per passenger.

9- So far as the appeal filed on behalf of the owner of the bus in question is concerned, the contention of the owner is that the amount of compensation awarded by the Trial Court is exorbitant. I do not find any force in this contention. The deceased Pyare Lal at the time of accident was 32 years of age and he was Assistant Teacher getting emolument of Rs. 949-84 per month. He had left behind his widow Smt. Abha aged 28 years and two minor sons Prasant and Mohan. The Tribunal has awarded Rs. 1,25,000/- as compensation to the claimants and the same cannot be said on higher side.

10 It has been submitted by, learned counsel appearing on behalf of the appellant – Sangram Singh who is the owner of the offending bus in question that he has already deposited some amount in the year 1997-98 in pursuance to the recovery notice issued against him on 18.10.1997. In case, if it is so, then the amount for which the owner of the vehicle is held to be liable to pay as compensation to the claimants, shall be adjusted towards the total payment to be made by him.

11. For the reasons recorded above, the A.O. No. 580/2001 filed by the Oriental Insurance Company Ltd. is allowed. The impugned

judgment and award dated 03.06.1985, in MACP No. 43 of 1983, passed by M.A.C.T./District Judge, Pauri Garhwal, is modified upto the extent that the Oriental Insurance Company/appellant is liable to pay the compensation for Rs. 5,000/- only.

12. It is made clear that the liability of the owner of the offending bus is not affected in any manner to pay the rest of the amount of the impugned award.

13. With the aforesaid modification in the impugned judgment and award, the A.O. No. 225/2001, filed by the owner of the bus in question is dismissed.

(B.C. Kandpal, J.)

21-12-2006

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